

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RAI STRATEGIC HOLDINGS, INC. and
R.J. REYNOLDS VAPOR COMPANY,

Plaintiffs and Counterclaim Defendants,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA INC.; and PHILIP MORRIS
PRODUCTS S.A.,

Defendants and Counterclaim Plaintiffs.

Case No. 1:20-cv-00393-LO-TCB

**MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTION *IN LIMINE* TO
EXCLUDE NEWLY ADDED REFERENCES TO MENTHOL PRODUCTS AND
ALLEGATIONS AGAINST REYNOLDS IN PRODUCT-LIABILITY CASES**

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INTRODUCTION

Reynolds respectfully moves the Court for an order excluding all reference and argument concerning menthol products, youth marketing, and allegations against Reynolds in unrelated product-liability cases. At Dr. James Figlar’s update 30(b)(6) deposition on June 3, 2022, PM/Altria’s counsel pursued irrelevant and inflammatory lines of questioning over continued objections, including:

- “Does Reynolds market menthol products to African-Americans?”
- “Has Reynolds ever been accused of targeting African-Americans with menthol tobacco products?”
- “Historically are you aware of any targeted marketing of menthol products to African-Americans by Reynolds?”
- “[D]id Reynolds determine that youths are more likely to use menthol products than non-menthol products?”
- “Did Reynolds ... reach any conclusions about ... whether youth are more likely to use menthol than regular tobacco products?”
- “In those product liability cases [where Dr. Figlar previously testified], did any of those involve flavored cigarettes?”

(Ex. 1, Figlar June 6, 2022 Dep. Tr., at 39:17-19, 42:2-6, 46:13-14, 42:18-21, 47:12-14, 52:15-16.)

PM/Altria also attempted to question Dr. Figlar about the speculative topic of possible FDA actions regarding flavored tobacco products. (*See id.* 34:12-13, 35:10-11.) Not only were these questions beyond the scope of the topics for Dr. Figlar’s update deposition, they are blatantly irrelevant to any issue in this case, racially inflammatory, and directed to topics excluded by prior rulings of the Court. (*See* Dkt. 1184-1 [MIL Order] at 2 (excluding “[t]estimony regarding a ‘youth smoking epidemic’ or the targeting of electronic cigarettes to young people); *id.* at 11 (“The flavor of the tobacco product is not related to any of the patented technology.”); *id.* at 1, 3 (excluding expert testimony “as to whether a device will or will not be granted FDA authorization”).)

BACKGROUND

Dr. James Figlar is Reynolds's corporate representative and 30(b)(6) witness, and is expected to testify at trial. Reynolds offered an update deposition of Dr. Figlar to give PM/Altria an opportunity to inquire about information Dr. Figlar learned from discussions with former colleagues after his original depositions. In denying PM/Altria's request for a written proffer of Dr. Figlar's testimony, Judge O'Grady ruled that PM/Altria should take his deposition, as offered by Reynolds, and explained his expectation for the deposition: "What I expect your deposition will be is, 'What have you learned from these gentlemen that you believe will affect your testimony as you prepare to testify in this case?'" (Ex. 2, May 20, 2022 Hr'g Tr. 25:10-26:4.)

The questions by PM/Altria's counsel at the update deposition (Dr. Figlar's third deposition in this case) did not conform to Judge O'Grady's stated expectation. PM/Altria's counsel extensively questioned Dr. Figlar about irrelevant and inflammatory topics, including race- and class-based questions about the use of menthol products. In addition to the questions quoted above, PM/Altria's counsel asked: "[D]id Reynolds reach any conclusions about whether any particular class of people is more likely to use menthol than regular tobacco products?" (Ex. 1 at 42:18-21.) "[A]re you aware of any targeted advertising of menthol products to African-Americans by Reynolds?" (Ex. 1 at 47:2-4.) PM/Altria's counsel also questioned Dr. Figlar about the allegations against Reynolds in unrelated product-liability cases: "[W]hat were the allegations against Reynolds in those product liability cases?" (Ex. 1 at 146:15-16.) "If you had to summarize for the jury in this case what the allegations were in the product liability cases that you testified in, what would you tell them?" (Ex. 1 at 147:21-48:2.)¹

¹ This line of questioning came as a surprise to Reynolds, given that Plaintiff Philip Morris USA was also a defendant in "the vast majority" of the product-liability cases that PM/Altria asked Dr. Figlar about, Philip Morris USA was subject to "exactly the same allegations" as "all the

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